

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 1557/2000

(6)

NEW DELHI, THIS THE 24TH JANUARY 2001

HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

1. Shri Anil Sagar
S/o Shri Rainjilal
R/o 1128, Sector 12,
R.K. Puram,
New Delhi-22
2. Shri Vikram Singh Arya
S/o Shri N.S. Arya,
R/o N-17, Laxmi Nagar,
Delhi-92
3. Shri Sunil Duggal
S/o Shri Shanker Lal
R/o BD-971, Sarojni Nagar,
New Delhi-23
4. Shri Gopal Singh Dugal
S/o Shri Tinka Singh Dugal
R/o A-82, S-I, Dilshad Colony,
New Delhi-95
5. Shri Ram Meena
S/o Shri Kedar Pd Meena
R/o Type I Quarter No.42,
Delhi College of Engineering,
Bawana Road, Sahababad,
Delhi-42
6. Shri Sandeep Kumar
S/o Shri Bakshi Ram
R/o 636, Krishi Kunj,
IARI, Pusa,
New Delhi-12
7. Shri Shiv Raj Meena
S/o Shri Tulsi Ram Meena
R/o G-3/222, Sector-16, Rohini,
New Delhi-85
8. Shri Praveen Kumar
S/o Shri Chedi Lal
R/o MIG Flat, Pokcet A,45-B,
Vikas Puri Extension,

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9. Shri Premod Kumar
S/o Shri Jagdish Chander
R/o 69-B, JG-I, Vikas Puri,
New Delhi-18
10. Shri Balwant Rai
S/o Shri Babu Ram,
R/o H-19/72, Sector - 7,
Rohini, New Delhi-85
11. Shri Subash Chand
S/o Shri Lal Singh
R/o 62, Chowk Mohella,
Kankar Khera,
Meerut, U.P.
12. Shri Charan Singh
S/o Late Shri Basant Lal
R/o R-5/121, Raj Nagar,
Ghaziabad, U.P.
13. Shri Sunil Bajolia
S/o Shri Tirath Ram
R/o CA/11, WEA, Karol Bagh,
New Delhi.
14. Shri Bhagwati Prasad
S/o Shri Suraj Singh
R/o C-II/191, Yamuna Vihar,
Delhi-53

(BY ADVOCATE SHRI L.K.SINGH)
Versus

...Applicants

1. Department of Telecommunication
Through the Chief General Manager Telephones
Northern Telecom Region
Kidwai Bhawan
New Delhi-110 001
2. Mahanagar Telephone Nigam Limited
Through the Chief General Manager Telephones
K.L. Bhawan,
New Delhi-110 050

...Respondents

(BY ADVOCATE SHRI V.K.RAO)

O R D E R (ORAL)

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Shri S.A.T.Rizvi, AM :

14 Junior Telecom Officers (JTOs) have filed this OA impugning the gradation list 1993 prepared by the respondents and placed at pages 24 onwards of the paperbook. They have also impugned respondents' letter dated 6.7.2000 at page 43 and dated 25.7.2000 at page 46 by which those juniors to the applicants are proposed to be promoted to the next higher grade of TES Group 'B'. They have further impugned the respondents' letter dated 30.7.1999, Annexure A-13 by which the respondents have corrected the recruitment years to which the applicants belong.

2. The facts of this case briefly stated are that the respondents issued an advertisement in March 1995 for holding examination for recruiting 292 JTOs supposedly for the recruitment year 1993. They next issued another advertisement in November, 1995 for recruiting 254 JTOs again supposedly for the recruitment year 1994. They issued a third advertisement sometime in December 1995 for recruiting 72 JTOs supposedly for the recruitment year 1995. The last advertisement was in respectt of SC ST candidates exclusively and had been issued in pursuance of Government of India's decision to fill up backlog vacancies pertaining to the SC & ST categories. The applicants who are SC & ST candidates applied for the first two examinations as also for the third examination. For some administrative reasons, the respondents could not hold the first two examinations

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as expeditiously as they should have, and the same were ultimately held together on 13-14/7/1996. The examination in respect of the third advertisement, being last in ~~the~~ point of time, was held earlier than the aforesaid examination and was in fact held on 27-28/1/1996 as scheduled. The results of the said last examination were announced on 1.3.1996 and the selected candidates were appointed on 13.1.1997 and 31.3.1997. On the other hand, the results in respect of the previous advertisements were declared in March 1997 after the examination had been held on 13-14/7/1996. The candidates selected against the said examination of July 1996 were appointed on 19.1.1998.

3. The applicants who were appointed first in point of time in January and March 1997 compared to others who were appointed on 19.1.1998 should in ordinary course have been considered senior and in fact they were so treated right upto July 1999. However, from the respondents's letter dated 30.7.1999, it would seem that the applicants who were earlier shown to belong to 1993 recruitment year were placed in the recruitment year 1995. The applicants are aggrieved by their placement in the recruitment year 1995.

4. The learned counsel appearing for the respondents has contended that the aforesaid arrangement whereunder the applicants have been placed in the recruitment year 1995 is in order. According

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to him, the applicants were recruited ab- initio in respect of recruitment year 1995 and, therefore, have been correctly placed in that recruitment year. He has for this purpose, placed reliance on the recruitment rules read with the advertisements issued. The first advertisement aforesaid, for instance provides that the candidates applying for the post of JTO should belong to a specified age group as on 1.7.1993. According to him, read with the recruitment rules, this would signify that aforesaid recruitment was in respect of the recruitment year 1993. Likewise, the next advertisement was in respect of the recruitment year 1994 and the third advertisement was in respect of recruitment year 1995. That being so, according to him, no mistake has been done in placing the applicants who were selected against the aforesaid last advertisement in the recruitment year 1995. The learned counsel has also raised the issue of non-joinder of necessary parties who, according to him, are likely to be adversely affected once a decision is taken in favour of the applicants.

5. The learned counsel appearing for the applicants has dealt with the contention raised by the learned counsel for the respondents by contending firstly that what the applicants have impugned is not the inter- se- seniority as such but the method followed by the respondents in preparing the gradation list of 1993 and, flowing from this, their intention in seeking to promote those who are their juniors. According to him, the method thus adopted by the

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respondents in seeking to promote others clearly and necessarily ignores their rightful claims for such promotion. Viewed thus, we are inclined to favour the plea advanced by the learned counsel for the applicants and reject the respondents plea that the OA is bad on account of non-joinder of necessary parties.

6. In regard to the basic contention raised by the learned counsel for the respondents, the learned counsel for the applicants contends that it is a strange situation in which the applicants who were selected and appointed earlier in point of time have been rendered junior to those who were selected and appointed later, all in the name of recruitment years to which the concerned vacancies were supposed to belong. According to him, the placement of the applicants in 1993 recruitment year is supported by the language used in the advertisements themselves. For instance, in respect of first advertisement, he points out, that the cover of the envelope to be sent by the applicants to the recruiting authority was required to be superscribed in bold letters "application for recruitment to JTO 1993". A similar provision has been made in the subsequent advertisement which again requires the envelope to be superscribed "application for recruitment to JTOs, 1993". The third advertisement, however, in the same place, does not require any specific year to be mentioned and the envelopes in respect of the said recruitment are required to be superscribed "application for recruitment to JTO (Special recruitment

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drive for SC & ST)". According to him, by leaving out the year as above from the aforesaid advertisement, the respondents intended to keep the decision to assign any recruitment year of their choice to the selected candidates, to themselves and eventually sprang a surprise on the applicants by changing the year of their recruitment earlier shown as 1993 to 1995 without assigning any reason beyond saying whatever has been contended by the learned counsel for the respondents. His plea is that if the aforesaid change in the recruitment year was to lead to unfavourable consequences in terms of seniority, it was the bounden duty of the respondents to afford an opportunity to show cause to the applicants. Respondents have not made any attempt to grant any such opportunity to the applicants and have found it proper suo-moto to assign a new year of recruitment, namely 1995 to the applicants. They earlier had themselves assigned 1993 recruitment year to the applicants.

7. The learned counsel for the respondents has not been able to produce before us any specific provision made in any rule, including the recruitment rules which would clearly provide for assignment of recruitment years in the manner in which the same has been done in the peculiar circumstances of this case. When pressed, the learned counsel for the respondents has placed reliance on a provision made in column 6 of the schedule to the Notification of June 1990 (Annexure R1) which is the Junior Telecom Ofaficers

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Recruitment Rules, 1990. The specific provision, he relies on is reproduced below:-

"Age for direct recruits:- Between 19 and 27 years (Relaxable for eligible departmental candidates upto 40 years/45 years in case of SC/ST officials in accordance with the instructions or orders issued by the Central Government)

Note: The crucial date for determining the age limit or service condition for both departmental and direct recruits as the case may be, shall be 1st July of the year for which applications for recruitment are called for."

The argument advanced by him is that since the date given for the purpose of determining the age specified in the advertisement has been shown as 1.7.1993, the implication is that the recruitment thereby made would pertain to the recruitment year 1993. The same, according to him, will hold good in respect of other advertisements also. The aforesaid argument, we find, is not based on a rational principle. We would, therefore, like to see how in the peculiar circumstances of this case, the aforesaid provisions relied upon by the learned counsel for the respondents can be best understood. The fact before us is that the applicant who were selected and appointed earlier in point of time are being considered junior to those selected and appointed later. This according to us is repugnant to the elementary sense of justice. We would, therefore, like to interpret the aforesaid provision so that the applicants who were, as stated, selected and appointed earlier are considered for being placed in the earlier recruitment years compared to others selected and appointed later. If that is

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done, the applicants will inevitably have to be placed in the recruitment year 1993 and others in the same recruitment year or in subsequent recruitment years depending on the number of vacancies pertaining to 1993 or subsequent years. The basic reason that has weighed with us is that the number of vacancies of several years being available all at one time, it is not open to the respondents first to recruit persons in respect of vacancies of later years and thereafter to recruit persons for vacancies relating to earlier years. However, this is what they (respondents) have succeeded in doing and we fail to appreciate the unjust outcome thereof. The respondents have, therefore, failed to convince us about merit in the pleas advanced by them. The same are accordingly rejected.

8. In the circumstances outlined in the preceding paragraph, we find it just and proper to quash and set aside the respondents' letter dated 30.7.1999 at Annexure A-13 and direct the respondents to issue the same again with this change that in respect of applicants the recruitment year shall remain unaltered and will continue to be shown as 1993 as was the case prior to the issuance of the said letter. Accordingly the JTOs Gradation list of 1993 (page 24 onwards of the paper book) will also undergo changes. The same shall, therefore, be recast keeping in mind the observations made in this order. It is clarified that following recasting of the gradation list in the manner indicated, the applicants will also

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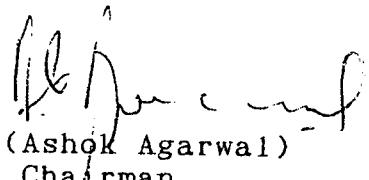
be entitled to all the consequential benefits. The respondents shall comply with these directions in a maximum of 3 months from the date of receipt of a copy of this order.

9. The OA is allowed in the aforesaid terms.

No costs.



(S.A.T. Rizvi)
Member (A)



(Ashok Agarwal)
Chairman

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